

State of New York
Court of Appeals

At a session of the Court, held at Court of
Appeals Hall in the City of Albany
On the fifth day
Of May 2005

Present, Hon. Judith S. Kaye, *Chief Judge, presiding*

1-10 Mo. No. 178

Shirley A. Brown,

Appellant,

et al.,

Plaintiff,

v.

Aames Capital Corporation,

et al.,

Respondents.

A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

s/

Stuart M. Cohen
Clerk of the Court

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX SPECIAL TRIAL PART

SHIRLEY A. BROWN, ANTOINE FORD,

Plaintiff(s),

-against-

Index No. 22941/02

AAMES CAPITAL CORPORATION; REFEREE
GAIL RICKETTS; GEORGE FORD,

Defendants(s).

HON. BERTRAM KATZ:

Motion by plaintiffs for an order granting a preliminary injunction restraining and enjoining defendant Aames Capital Corporation ("Aames Capital") from taking any steps to evict the plaintiffs from premises known as 1659 Hammersley Avenue and for other relief is denied in all respects. The plaintiffs have not demonstrated a likelihood of success on the merits or a balance of equities in their favor.

It is uncontroverted that the plaintiffs have filed three successive bankruptcy proceedings in order to defeat, and certainly delay, an underlying mortgage foreclosure action under Index Number 25385/1996 which culminated in a Judgment of Foreclosure on August 1, 1997. The most recent bankruptcy proceeding was commenced on December 15, 1999. As Aames Capital was not aware of this filing, the auction sale in the foreclosure proceeding was conducted on December 17, 1999 and the deed was issued to Aames Capital as the successful bidder, for the sum of \$100.00. Said sale and transfer of the deed was clearly a nullity, and no party alleges otherwise. On September 6, 2000, an application by Aames Capital for relief from the Automatic stay was granted. The Order of the Bankruptcy Judge reads as follows:

"On the 25th day of May, 2000, Aames Home Loan ("Secured Creditor") filed a motion (the "motion") for relief from the Automatic stay in the above-captioned case, for requesting an order of this court granting Secured Creditor relief from the Automatic stay to exercise and enforce all of its rights to and interests in real property, improvements thereon and personal property in which Shirley A. Brown (the "Debtor")

has an interest (collectively, the "Property"). The Property is more commonly known as 1659 Hammersley Avenue, Bronx, New York.

The court considered the papers filed in this matter, the facts and circumstances of this case, and the arguments and representation of counsel. The court, having made and entered concurrently herewith its Findings of Fact and Conclusions of Law, and based thereon and good cause appearing therefore, it is:

ORDERED, that the Motion is granted and the Automatic stay is hereby terminated with respect to Secured Creditor's rights to and interest in the Property and Secured Creditor is authored to fully

ORDERED the case trustee shall be given notice of any supplies monies that may exist after the sale."

A bankruptcy sale – the fourth such sale – was conducted on December 14, 2000, when the premises were again sold to Aames Capital for \$100.00, and a second referee's deed was executed and delivered on January 19, 2001.

Subsequently, a motion by these plaintiffs to vacate the Judgment of Foreclosure was denied by order of this Court dated April 2, 2001, which order was affirmed by the Appellate Division.

This action has now been commenced by the plaintiffs Shirley Brown and Antoine Ford on or about July 18, 2002, seeking inter alia injunctive relief against their eviction from the premises pursuant to a holdover proceeding now pending in the Civil Court under Index Number 23532-2001. The plaintiffs argue that the transfer of the deed to Aames Capital on January 19, 2001 was a nullity, because the dismissal of the bankruptcy proceeding on January 17, 2001 caused title to revert to the plaintiffs, and thereby rendered the auction sale on December 14, 2000 to be a nullity as well. The plaintiffs rely on Section 349 (b) of the Bankruptcy Code, which states in pertinent part that

"(b) Unless the court, for cause, orders otherwise, a dismissal of a case order than under section 742 of this title...

(2) vacates any order, judgment, or transfer ordered, under section 522 (I)(1), 542, 550, or 553 of this title; and

(3) revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title." [emphasis supplied]

A plain reading of the order of September 6, 2000 thoroughly refutes this odd interpretation of the statute, as the Court clearly "order[ed] otherwise" by permitting Aames Capital to immediately and fully proceed with their foreclosure action, even going so far as to waive the ten day waiting period. The notion that the Court intended for Aames to proceed with the sale, and to thereafter undermine the sale and revest title in the plaintiffs by dismissing the bankruptcy

proceeding of Shirley Brown is utterly nonsensical. The plaintiffs' citation to Sports & Science Inc., v. Reilly, 95 B.R. 745 is clearly inapposite, and actually undermines their arguments, as the mortgage in that case conducted a sale without obtaining relief from the Automatic stay, and the Court specifically distinguished cases such as the one at bar, holding that 11 U.S.C. 349 (b) could not be interpreted to 'unwind' sales in those instances where transfers to bona fide purchasers were made in accordance with the Bankruptcy Code and the orders of that Court. This Court declines to hold that the sale and transfer of the deed in compliance with the order of the Bankruptcy Court was undermined by the subsequent dismissal of the Bankruptcy proceedings by that same Court.

The motion is denied in all respects.

This will constitute the order of this Court.

Dated: December 6, 2002

✓

Bertram Katz, J.S.C.

At an IAS Part 04 of the
Supreme Court of the State of
New York, County of Bronx,
at 851 Grand Concourse,
Bronx, New York, on the 6
day of May, 2003.

PRESENT: Bertram Katz, J.S.C.

X

SHIRLEY A. BROWN, ANTOINE FORD,

Plaintiffs,

-against-

Index No. 22941/02
(Katz, J.)

ORDER DIMISSING
COMPLAINT AND
CANCELING
LIS PENDENS

AAMES CAPITAL CORPORATION; REFEREE
GAIL RICKETTS; GEORGE FORD,

Defendants.

Defendants, Aames Capital Corporation (hereinafter "Aames"), having moved pursuant to CPLR R. 3212 for an order granting Aames summary judgment dismissing the causes of action set forth in the Plaintiff herein, and said motion having been submitted on March 28, 2003, and Aames having appeared by Upton Cohen & Slamowitz, and Plaintiff having appeared by Kenneth T. Wasserman, Esq., and this court having rendered a decision dated April 10, 2003; and

UPON the summons and complaint dated July 17, 2002, the answer with counterclaim dated August 29, 2002, the reply dated September 12, 2002, the notice of motion for summary judgment dated January 30, 2003, the affirmation of Leonard M. Fischer, Esq. dated January 30, 2003 and the exhibits annexed thereto in support of the motion, the affirmation of Kenneth T. Wasserman, Esq. dated March 11, 2003 in opposition to the motion, and the affidavit of Shirley Brown sworn to on May 12, 2003 and the exhibits annexed thereto in opposition to the motion, and upon all prior proceedings had herein, and after due deliberation by the court;

NOW, upon the motion of Upton Cohen & Slamowitz, it is hereby ORDERED, that Aames' motion for summary judgment dismissing the complaint and canceling the lis pendens is granted in its entirety, and it is further

ORDERED, that plaintiff's complaint is hereby dismissed with prejudice; and it is further

ORDERED, that the Bronx County Clerk is hereby directed to cancel and remove from the public records the Notice of Pendency filed by the plaintiff against the real property commonly known as 1659 Hammersley Avenue, Bronx, New York, section 16, block 4765, and lot 34.

ENTER:

s/

Hon. Bertram Katz, J.S.C.

5131

Shirley A. Brown et al.,
Plaintiffs-Appelants

-against-

Aames Capital Corporation, et al.,
Defendants-Respondents.

Shirley A. Brown, appellant pro se.

Cohen & Slamowitz, LLP, Woodbury (Mitchell Selip of counsel), for
respondents.

Order, Supreme Court, Bronx County (Bertram Katz, J.), entered May 13, 2003, which, in an action by plaintiffs mortgagors to set aside a foreclosure sale, granted defendant mortgagee's motion for summary judgment dismissing the complaint, unanimously affirmed, without costs.

As the motion court previously held in denying plaintiffs' motion for a preliminary injunction staying the eviction proceedings pending against them in Civil Court, the foreclosure sale, which was conducted pursuant to a Bankruptcy Court order lifting the Automatic stay imposed by the third bankruptcy proceeding filed by one of the plaintiffs, was unaffected by the dismissal of that proceeding some five weeks after the public sale and two days before the delivery of the Referee's deed to defendant. Bankruptcy Code (11 USC) § 349(b) provides, inter alia, that dismissal of a case revests the estate's property in the holder thereof immediately before the commencement of the case, "[u]nless the court, for cause, orders otherwise." It is clear the Bankruptcy Court departed from the prevailing rule here. As the motion court stated, it would be "utterly nonsensical" to say that the Bankruptcy Court intended defendant to proceed with the sale only to then revest title in plaintiffs by dismissing the bankruptcy proceeding.

**THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST
DEPARTMENT**

ENTERED: January 20, 2005

s/ _____

CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

_____ X

SHIRLEY A. BROWN, ANTOINE FORD,

Plaintiffs,

Index No. 22941/02
(Katz, J.)

-against-

COMPLAINT

AAMES CAPITAL CORPORATION; REFEREE
GAIL RICKETTS; GEORGE FORD,

Defendants.

_____ X

Plaintiffs Shirley Brown and Antoine Ford, by their attorney, the Law Offices of Kenneth T. Wasserman for their complaint against the defendants, allege as follows:

1. Plaintiffs Shirley Brown and Antoine Ford are residents of the County of Bronx, City and State of New York.
2. Upon information and belief, defendant Aames Capital Corporation ("Aames") is a corporation organized and existing pursuant to the laws of the State of California, having a principal place of business at 350 South Grand Avenue, Los Angeles, California 90021.
3. Upon information and belief, defendant George Ford is a resident of the State of New York, County of Columbia.
4. Upon information and belief, defendant Referee Gail Ricketts was the referee appointed in a foreclosure action in Supreme Court, Bronx County, between Aames as plaintiff, and George Ford, Antoine Ford and Shirley Brown, et al., as defendants, bearing Index No. 025385/96.
5. George Ford is made a defendant herein because he has refused or is otherwise unable to join this lawsuit as a plaintiff.
6. From at least December 15, 1995 until December, 1999, plaintiffs Antoine Ford and Shirley Brown and defendant George Ford, were owners of the premises at 1659 Hammersley Avenue, Bronx, New York 10469 ("the premises").

7. On or about December 17, 1999, as a result of a foreclosure action brought by defendant Aames against plaintiffs Antoine Ford and Shirley Brown, defendant George Ford, and others, in an action in Supreme Court, Bronx County, bearing Index No. 025385/96, a Referee's Deed In Foreclosure to the premises was transferred to Aames by Gail Ricketts, Esq., Referee. The Referee's Deed was recorded in the Bronx County Office of the City Register on or about March 27, 2000.

8. The said Referee's Deed is legally null and void, of no force and effect, and subject to vacatur, in that the Referee's Deed was entered into and filed and recorded at a time that an automatic stay pursuant to 11 U.S.C. 362(a) was in effect with respect to Shirley Brown, who had filed a Chapter 13 petition in bankruptcy on December 15, 1999. Such stay automatically stays any foreclosure action pending against the debtor and the property of the debtor.

9. Upon information and belief, Aames was actually and constructively aware of the existence of the automatic stay both at the time the Referee's Deed was entered into and at the time the said Deed was recorded, Aames violated its legal responsibility to notify the Referee of the existence of the automatic stay, and, in direct willful contravention of the automatic stay, Aames caused and allowed to take place, the signing of the Deed and its later recording.

10. The said Referee's Deed is legally null and void, of no force and effect, and subject to vacatur in that Shirley Brown, Antoine Ford and George Ford were not given adequate or proper notice of the alleged sale that led up to the transfer of the Referee's Deed.

11. The said Referee's Deed is legally null and void, of no force and effect, and subject to vacatur in that the public at large was not given adequate or proper notice of the alleged sale that preceded the transfer of the Referee's Deed.

12. In or about September, 2000. Aames requested and received a lifting of the automatic stay but it did not take legally necessary actions during the time that the lifting of the stay was in effect, in order to properly pass title on the premises, nor did it record a deed after the stay was lifted; consequently, as of the date of the dismissal of the bankruptcy petition, the title to the premises reverted to the persons who had title prior to the filing of the bankruptcy petition, to wit, Shirley Brown, Antoine Ford and George Ford.

AS A FIRST CAUSE OF ACTION

13. The continued validity of the wrongful referee's deed to the premises will cause irreparable damage to plaintiffs Antoine Ford and Shirley Brown and defendant George Ford, unless enjoined.

14. Greater injury will be inflicted upon plaintiffs Antoine Ford and Shirley Brown by the denial of the relief sought than will be inflicted upon defendant Aames by the granting thereof.

15. Plaintiffs have no adequate remedy at law.

16. Plaintiffs have made every reasonable effort to cancel the Referee's Deed by means other than litigation, but such efforts have been to no avail.

17. Plaintiffs have duly complied with all of the obligations imposed upon them by law.

18. As a result of the foregoing, plaintiffs are entitled to an order and judgment.

a) enjoining and restraining defendant Aames Capital Corporation, as well as its agents, representatives and all persons acting in concert of participation with it or under its control, from taking any step to sell, transfer, encumber or transfer title on the premises, with anyone other than plaintiffs Antoine Ford and Shirley Brown, and defendant George Ford;

b) directing defendant Aames Capital Corporation to re-deliver to plaintiffs Antoine Ford and Shirley Brown and defendant George Ford, proper title to the premises.

AS A SECOND CAUSE OF ACTION

19. Plaintiff repeats and realleges every allegation contained in paragraphs 1 through 12, inclusive, of the complaint, as if fully set forth herein.

20. As a result of the foregoing, plaintiffs are entitled to an order and judgment:

a) declaring and determining that the Referee's Deed, dated December 17, [1999] is null and void, of no force and effect, and subject to vacatur;

b) declaring and determining that improper, unreasonable and invalid notice was given to the public and to plaintiffs of the sale of the premises;

c) declaring and determining that plaintiffs Antoine Ford and Shirley Brown and defendant George Ford are the lawful and rightful owners of the premises;

d) declaring and determining that the alleged sale of the premises to defendant Aames Capital Corporation is a nullity, vacated, cancelled and terminated.

AS A THIRD CAUSE OF ACTION

20. Plaintiff repeats and realleges every allegation contained in paragraphs 1 through 12, inclusive, of the complaint, as if fully set forth herein.

21. As a result of the foregoing, plaintiffs are entitled to an order and judgment, awarding damages to the plaintiffs sustained to the date of judgment herein by reason of the improper transfer of the premises to defendant Aames Capital Corporation, including punitive damages and attorneys fees, which amount of damages is at present unknown to plaintiff but is believed to be in excess of \$300,000.00.

WHEREFORE, plaintiff demands judgment:

1. On the First Cause of Action against defendant Aames:

a) enjoining and restraining defendant Aames Capital Corporation, as well as its agents, representatives and all persons acting in concert or participation with it or under its control, from taking any step to sell, transfer, encumber or transfer title on the premises, with anyone other than plaintiffs Antoine Ford and Shirley Brown, and defendant George Ford;

b) directing defendant Aames Capital Corporation to-re-deliver to plaintiffs Antoine Ford and Shirley Brown and defendant George Ford, proper title to the premises;

c) enjoying and restraining defendant Aames Capital Corporation, as well as its agents, representatives and all persons acting in concert or participation with it or under its control, from taking any step to evict plaintiffs Antoine Ford and Shirley Brown from the premises.

On the Second Cause of Action against defendants Aames and Ricketts:-

a) declaring and determining that the Referee's Deed, dated December 17, [1999] is null and void, of no force and effect, and subject to vacatur;

b) declaring and determining that improper, unreasonable and invalid notice was given to the public and to plaintiffs Antoine Ford and Shirley Brown and defendant George Ford, of the sale of the premises;

c) declaring and determining that plaintiffs Antoine Ford and Shirley Ford and defendant George Ford are the lawful and rightful owners of the premises;

d) declaring and determining that the alleged sale of the premises to defendant Aames Capital Corporation is a nullity, cancelled, vacated and terminated;

On the Third Cause of Action against defendant Aames:

Awarding damages to the plaintiff sustained to the date of judgment herein by reason of the improper sale of the premises to defendant Aames Capital Corporation, including punitive damages and attorneys fees, which total amount of damages is at present unknown to plaintiff but is believed to be in excess of \$300,000.00;

and the plaintiffs have such other relief as this Court deems just, including interest, costs and attorneys fees.

Dated: New York, New York
July 17, 2002

LAW OFFICES OF KENNETH T. WASSERMAN

S/ _____
By: Kenneth T. Wasserman
Attorneys for Plaintiff
The Empire State Building
350 Fifth Avenue
Suite 4810
New York, New York 10118
(212) 244-3399

MS. KAVA: Your Honor, Ms. Brown just handed me a letter that is actually addressed to you with a copy to Mr. Sapir dated today. It says that, "Dear Judge Blackshear, I am writing in objection to the sale of my property. I became aware that the sale had actually gone through on July 12 of 2,000. On that date, I obtained a computer printout of a copy of the deed which is registered to Aames Capital. As of August 1" the property remains in the name of Aames Capital.

"Your Honor, I am current with the mortgage company and with Mr. Sapir through June 2000. I want to make payments with you until the property is back in my name.

"I beg the Court to forgive me if I am wrong since I don't have an attorney at the present time. My initial lawyer, Peter Anderson and his replacement, Paul Krasnick have been dismissed. The reasons for the dismissal are discussed within the attached letters to the disciplinary committee.

"I would have obtained a new lawyer, but Mr. Krasnick did not return the \$600 which he promised.

"Thank you for your consideration."

The Debtor's plan calls for payments of \$1,155 for 60 months. She has made the payments although I am not quite sure how given her budget is showing less than that on a monthly basis to be able to pay.

Aames
Aames Home Loan

350 S. Grand Avenue
47th Floor
Los Angeles, CA 90071

Real Estate Department

Rex Malott, Senior Vice President
(323) 210-4892

February 20, 2002

Shirley A. Brown
1659 Hammersley Avenue
Bronx, New York 10469

Re: Aames Capital Corporation Loan No. 2772051
New York State Building Department /
Mortgage Banking
Division File No. 02 M 137

Dear Ms. Brown:

This letter will respond to your letter of January 17, 2002 to the New York State Building Department. A copy of this letter will be sent to Mr. Roland Dempster, a Senior Bank Examiner of the Banking Department, in accordance with his request of January 22, 2002. I also attach a copy of an Order Granting Relief from Stay signed September 6, 2000 by the bankruptcy judge in your bankruptcy proceeding and a copy of a January 11, 2002 decision/order issued in the Bronx County Civil Court Case No. 23532/01.

After carefully reviewing the history of this loan, we have determined that there is no basis to support the contentions raised in your letter. We must also decline your requests for financial compensation, return of the house and a new loan.

It is regrettable that this loan, made in 1995, became delinquent in early 1996 and remained so. Otherwise the foreclosure and pending eviction would not have been necessary. But as determined in the course of three bankruptcies and various court proceedings, the actions taken by Aames in connection with the foreclosure and eviction proceedings have complied with applicable law.

I would also like to clarify some of the points raised in your letter. You mentioned that Aames foreclosed on the property on

December 17, 1999, notwithstanding a bankruptcy filing on December 14, 1999. In fact, the bankruptcy filing voided the foreclosure sale. This was the reason for a subsequent motion filed by Aames in the bankruptcy proceeding in which relief from automatic stay was sought for the purpose of conducting a second foreclosure sale.

On June 21, 2000 Aames received \$8,217.00 in post-petition bankruptcy payments. \$6,662.44 was applied to post-petition payments in the amount of \$1,665.61 each due on the first day of January, February, March and April of 2000. \$58.10 was applied as a late charge and \$1,496.46 was held as unapplied funds since the amount was insufficient to constitute a full monthly payment. After application of these funds you were still delinquent on post-petition payments of \$1,665.61 each due on May 1 and June 1, 2000. No subsequent payments were received and at no time were you current on the post-petition payments.

On September 6, 2000 Aames was granted relief from automatic stay. A new foreclosure sale was scheduled and held on December 14, 2000. The property reverted to Aames at the foreclosure sale.

Since that time, as you are aware, there has been litigation challenging the foreclosure action and subsequent eviction efforts. These challenges have not been successful. We are also unaware of any basis for the contention that your civil rights have been violated, as stated in your letter of January 17, 2002.

Sincerely,

s/ _____
Rex. A Malott
Senior Vice President-Real Estate
National Loan Servicing

CC: Roland Dempster
Senior Bank Examiner/Mortgage Banking Division
State of New York Banking Department
2 Rector Street
New York, NY 10006

MS. KAVA: The Debtor is a \$129 behind. She's paid more than \$9,000 to the Trustee.

THE COURT: Well, that's in her favor.

MS. KAVA: The stay has been lifted.

THE COURT: The stay has been lifted?

MS. KAVA: I believe it has.

MR. CHEN: I called up the lawyer for the mortgage company and at least on the phone he did not think the stay was lifted.

THE COURT: Oh, don't you know somebody is sandbagging you?

MR. CHEN: I have a Court Order - I collected the electronic docket and there was no - there was a motion made but there's no order signed and the motion was made back in June so -

THE COURT: He is sandbagging you because if he settled an Order to that effect I'm going to sign on the date because unlike Ms. Kava's orders, I do not have the landlord come back unnecessarily.

MR. CHEN: The truth is I don't know enough about this case.

MS. KAVA: Was this Order ever signed, Your Honor, that had lifted the automatic stay?

THE COURT: Did I sign an Order lifting the automatic stay?

MS. KAVA: I don't know. I just have a proposed Order.

MR. LeWINTER: I think it's on Pacer that the stay was lifted. What I was trying to tell the Debtor, what I would propose is even though one of her other sons is on the deed, she indicated he's married he can't go through a bankruptcy, what have you, is there some way in this unique circumstances to allow this case perhaps to be dismissed without prejudice that then she can then file clean? She doesn't want to do that herself. I thought that would be the cleanest -

THE COURT: No, the motion to lift the automatic stay is all that's required. If the Debtor wished to voluntarily dismiss the petition it must be with prejudice according to 109(g).

MR. LeWINTER: If the bank had not put it up for sale but had done the motion to annul the stay -

THE COURT: Why would they make a motion to annul the stay if relief from the stay has already been granted?

MR. LeWINTER: To remind the Court this was a case where the Debtor filed December 15th and the sale went through December 17th.

THE COURT: They just basically thought, forget about that and start all over.

MR. LeWINTER: Right.

I was trying to indicate to the Debtor how irregular and quote unethical this might seem this.

THE COURT: Nothing irregular about it.

MR. LeWINTER: The Debtor feels, hey, what about that illegal sale they did.

THE COURT: They forgot about that. They're going to start all over again as if they never did it before, and as far as the Debtor against it, it just means they're going to go through a new process, a new sale process.

MR. LeWINTER: They tricked her in the sense -

THE COURT: How did they trick her, counselor?

MR. LeWINTER: By going through, initially, with that sale, keeping her in bankruptcy this long.

THE COURT: From what I understand of this case, they were not aware of the bankruptcy petition filing when they sold it the first time.

Kenneth T. Wasserman
ATTORNEY AT LAW
Empire State Building
350 Fifth Avenue, Suite 4810
New York, New York 10118
ktwasserman@worldnet.att.net
(212) 244-3399 Fax (212) 244-0980

FOR SETTLEMENT PURPOSES ONLY – CONFIDENTIAL

October 29, 2002

BY TELECOPIER (516-364-3431) AND BY REGULAR MAIL

Upton, Cohen & Slamowitz
485 Underhill Boulevard
Syosset, NY 11791-9030
Attn: Leonard Fisher, Esq.

Re: Brown v. Aames

Dear Mr. Fisher:

In furtherance of our recent discussion, I wish to propose to you're the following proposal that would benefit both sides during the current litigation. Shirley Brown will pay your client the amount of \$800 per month for use and occupancy, beginning November 1st, and continuing until the pendency of this litigation. In consideration therefore, Aames will accept Mrs. Brown's tenancy during the pendency of the litigation. An agreement would be signed that, in the event that the required monthly payment is in arrears, the marshal may continue with his eviction, and the present lawsuit would be dismissed.

The proposal benefits Aames because it will receive revenue during the lawsuit, without prejudice to any position it would take during the lawsuit. The proposal benefits my clients, because it would regularize their situation during the lawsuit's duration.

Would you please present this proposal to your client.

Thank you for your cooperation.

Very truly yours,

s/

Kenneth T. Wasserman

DEPARTMENT DISCIPLINARY COMMITTEE

Supreme Court. Appellate Division

First Judicial Department

61 Broadway

New York, NY 10006

(212) 401-0800

Fax (212) 401-0810

May 10, 2001

PERSONAL AND CONFIDENTIAL

Ms. Shirley A. Brown
1659 Hammersley Avenue
Bronx, NY 10469-3113

Re: Matter of Paul Krasnick, Esq.
Docket No. 2000.1390

Dear Ms. Brown:

We have received your letter dated February 2, 2001 in which you have requested reconsideration of the determination by this Committee to dismiss your complaint against the above respondent - attorney. As a result of your request we forwarded your letter, together with the entire file, to a different member of the Department Disciplinary Committee than the person who originally reviewed and approved the staff recommendation of dismissal.

That independent review has now taken place. I have been formally advised that second reviewing member is in accord with the original decision not to proceed further with your complaint. Accordingly, I regret to inform you that we cannot be of any further assistance in this matter.

Very truly yours,

s/_____
Thomas J. Cahill

HF:adp/I:GC/P:RVT/A:LAW
DC540(F420/TB501)

Appendix K

AMERICAN DREAM HOMES REALITY, INC.

**3052 Eastchester Road
Bronx, New York 10469
Tel: (718) 671-5500
Fax: (718) 320-4246**

November 10th, 1998

Re: 1659 Hammersley Ave. Bronx NY 10469

To Whom It May Concern:

Per your request, we have inspected the above referenced property for valuation purposes. We have considered the age, size, room count, lot size, location and condition of the improvement towards estimating fair market value. Considering the aforementioned, we have determined the fair market value of the subject property to be fairly represented in the amount of \$225,000.00. Please see page two which includes recently sold sales which area considered comparable to the subject property.

Sincerely,

**s/ _____
Aubrey Abrahams
Real Estate, Broker / Mortgage Broker**

Petition for Rehearing Brief Unavailable for Filming at this Time